

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SLEEPY'S, LLC,

Plaintiff,

- against -

SELECT COMFORT WHOLESALE
CORPORATION, SELECT COMFORT RETAIL
CORPORATION and SELECT COMFORT
CORPORATION,

Defendants.

Civil Action No.

07 CV 4018 (Platt, J.)(Lindsay M.J.)

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION TO ADOPT
AND MODIFY THE SPECIAL
MASTER'S MEMORANDUM &
ORDER ON DEFENDANT'S MOTION
TO EXCLUDE TESTIMONY AND
EVIDENCE REGARDING
PLAINTIFF'S SHOP REPORTS**

Having considered the moving papers and documents in the record, the Court finds that Plaintiff's shop reports are inherently untrustworthy and will improperly suggest testimony to witnesses before any foundation has been laid to show that the written statements are actually those of the testifying witness.

IT IS HEREBY ORDERED:

1. Defendant's Motion to Adopt and Modify the Special Master's Memorandum & Order on Defendant's Motion to Exclude Testimony and Evidence Regarding Plaintiff's Shop Reports is GRANTED.
2. The Special Master's Order on Defendant's Motion to Exclude Testimony and Evidence Regarding Plaintiff's Shop Reports is hereby modified to state that Plaintiff is precluded from using the shop reports to prepare witnesses for trial or to refresh witnesses' memories when testifying without first establishing at trial that the shop reports are the prior writings of those witnesses.
3. The Special Master's Order on Defendant's Motion to Exclude Testimony and Evidence Regarding Plaintiff's Shop Reports is adopted as modified.

The Honorable Thomas C. Platt